

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR
RESERVATION OF WATER NO. 9934-r
BY THE MONTANA DEPARTMENT OF STATE
LANDS

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) FINDINGS OF FACT AND CON-
) CLUSIONS OF LAW OF APPLI-
) CATION NO. 9934-r
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The above-entitled matter came on regularly for hearing starting on or about August 10, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared by and through its counsel of record, John North and David Woodgerd. The Montana Department of Natural Resources and Conservation appeared by and through its counsel of record, Richard Gordon. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. The Montana Department of Fish and Game appeared by and through its counsel of record, F. Woodsite and Clayton Herron. The fourteen applicant conservation districts appeared by and through their counsel of record, Gary Spaeth. Utah International, Inc., appeared by and through its counsel of record, Urban Roth. The Montana Power Company appeared by and through its counsel of record, Robert Woodahl. Intake Water Company appeared by and through its counsel of record, Henry Loble. Trout Unlimited and the Federation of Fly Fishermen appeared by and through their counsel of record, James Goetz. Witnesses were duly sworn, and oral and documentary evidence was introduced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the Montana Department of State Lands, Application No. 9934-r:

FINDINGS OF FACT

1. The Montana Department of State Lands has applied for a reservation of 15,078 acre-feet of water per year (af/y) in order to irrigate 10,270 acres by waterspreading. No maximum flow rate has been requested. Diversions are requested from numerous tributaries of the Yellowstone River and would be located in Rosebud, Treasure, Sweet Grass, Big Horn, Yellowstone, Richland, Prairie, Dawson, Powder River, and Custer counties (Montana Department of State Lands, Application No. 9934-r, pp. 2 through 17).

Findings Related to the Purpose of the Reservation (89-890(3)(a)).

2. The purpose of this reservation is to ensure that water will be available for the expansion of irrigation on land managed by the Montana Department of State Lands (Montana Department of State Lands, Application No. 9934-r, p. 1).

3. It is established to the satisfaction of the Board that a purpose of the reservation has been shown (Finding 2).

Findings Related to the Need for the Reservation (89-890(3)(b)).

4. The Resource Development Bureau fully intends to develop all the irrigable school trust land in the Yellowstone River Basin which is suitable for water spreading irrigation (Tr. Vol. 3, pp. 36 and 37).

5. Under the current budget limitations, it will take a number of years to develop the irrigable school trust land in the Yellowstone River Basin (Tr. Vol. 3, pp. 36 and 37).

6. Application for Reservation No. 9934-r is needed to insure the availability of water in the Yellowstone River Basin to develop school trust lands which

cannot be developed in the near future due to the above budget limitations (Tr. Vol. 3, pp. 23 and 24).

7. It is established to the satisfaction of the Board that a need for the reservation has been shown.

Findings Related to the Amount of Water Necessary for the Purpose of the Reservation (89-890(3)(c)).

8. The reservation of water requested by the Department of State Lands will be used for waterspreading irrigation.

9. The amount of water necessary for water spreading irrigation of school trust land is 15,078 acre-feet based on 10,270 new acres of school trust land being feasible for water spreading irrigation projects and approximately 1.5 acre-feet as the amount of water needed per acre per year to adequately supply a water spreading irrigation project (Application No. 9934-r, pp. 3 through 8).

10. It has been established to the satisfaction of the Board that 15,078 acre-feet to be used to waterspread irrigate 10,270 new acres is the amount necessary for the purpose of the reservation to the year 2000.

Findings Related to the Public Interest (89-890(3)(d)).

11. There are many State Lands that can be put to more profitable use in the future by use of proper irrigation.

12. If State Lands are properly irrigated and crops are grown, it will be in the public interest in that there will be a better return of profits from these State Lands.

13. It has been established to the satisfaction of the Board that 15,078 acre-feet to be used to water spread irrigate 10.270 new acres is in the public interest

CONCLUSIONS OF LAW

1. Chapter 8, Title 89, R.C.M. 1947, and in particular, Section 89-890 R.C.M. 1947, authorize the adoption by the Montana Board of Natural Resources and Conservation of orders reserving water to qualified applicants for reservation of water.

2. If ordered adopted, a reservation must be ordered adopted in accordance with Chapter 8, Title 89, R.C.M. 1947, and any rules adopted thereunder.

3. The Applicant, Montana Department of State Lands, is an agency of the State of Montana and as such is entitled to apply to reserve waters within the State of Montana in accordance with Section 89-890, R.C.M. 1947, and any rules adopted thereunder.

4. All pertinent statutes and rules of the State of Montana have been adhered to in the review of this reservation Application, both by the Montana Department of Natural Resources and Conservation and by the Montana Board of Natural Resources and Conservation.

5. Based upon the above Findings of Fact, and specifically based upon any condition, limitation, or modification of the full Application appearing in said Findings, all pertinent criteria delineated at Section 89-890, R.C.M. 1947, and any rules adopted thereunder providing for the adoption of an order reserving water have been met.

6. Nothing found herein has bearing upon the status of water rights claimed by the Applicant other than those herein newly applied for, nor does anything found herein have bearing on the status of claimed water rights of any other party except in relation to those rights herein newly applied for, to the extent necessary to reach a conclusion herein.